

## **CHAPTER 328B**

### **Massage Therapists**

**328-B:1 Regulation of Massage Therapists.** The general court, to protect the health, safety, and welfare of the people of the state of New Hampshire, establishes a regulatory program for massage therapists and massage establishments, including establishing basic qualifications for massage therapists, providing for the inspection of all massage establishments.

Source. 1990, 12:1, eff. Jan. 1, 1991. 1996, 47:11, eff. June 23, 1996.

**328-B:2 Definitions.** In this chapter:

I. "Applicant" means a person who has submitted to the commissioner an application for a license pursuant to this chapter.

II. "Advisory board" means the advisory board of massage therapists.

III. "Compensation" means the receipt of:

(a) Money, goods, services, or other things of value; or

(b) A promise to deliver money, goods, services, or other things of value.

IV. "Commissioner" means the commissioner of the department of health and human services.

V. "Licensee" means a person to whom a license has been issued pursuant to this chapter.

VI. "Massage" means the application of a system of structured touch which includes holding, pressure, positioning, or causing movement, by manual means, for the purpose of promoting, maintaining, and restoring the health and well-being of the client. Massage is designed to promote general relaxation, improve movement, relieve somatic and muscular pain or dysfunction, stress and muscle tension, and provide for general health enhancement, personal growth, and the organization, balance, and integration of the body.

VII. [Repealed.]

VIII. "Massage therapist" means a licensed individual who performs massage for compensation. Titles used may include: massage therapist, massage practitioner, bodywork practitioner, bodyworker, muscle therapist, massotherapist, or somatic therapist practitioner. A massage therapist uses visual, kinesthetic, and palpatory skills to assess the body, and may evaluate the client's condition to the extent of determining whether massage is indicated or contraindicated.

Source. 1990, 12:1. 1995, 310:159, 183, eff. Nov. 1, 1995. 1996, 47:2-4,12, I, eff. June 23, 1996.

**328-B:2a Scope of Practice.** A massage therapist may do any of the following when performing massage, including, but not limited to:

- I. Use of heat and cold, hydrotherapy, heliotherapy, and external application of herbal or topical preparations not classified as prescription drugs.
- II. Analysis of posture and movement.
- III. Provision of education in self-care and stress management.
- IV. Performance of techniques in which the massage therapist had been trained intended to affect the energetic systems of the body.

**328-B:3 Prohibited Acts.** – No person shall:

- I. Act or advertise as a massage therapist for compensation without holding a license issued pursuant to RSA 328-B:6.
- II. [Repealed.]
- III. Fail to comply with an order of the commissioner issued pursuant to this chapter.
- IV. Fail to comply with a rule adopted by the commissioner pursuant to this chapter.
- V. Violate any other provision of this chapter.
- VI. Hire as an employee massage therapist any person not holding a license issued pursuant to RSA 328-B:6.

Source. 1990, 12:1. 1995, 310:183, eff. Nov. 1, 1995. 1996, 47:10, 12, II, eff. June 23, 1996.

**328-B:4 Powers and Duties of the Commissioner; Rulemaking.** – The commissioner shall have the power and duty to:

- I. Issue, suspend, revoke, renew, and deny licenses in accordance with rules adopted under RSA 541-A.
- II. Hold hearings, conduct inspections, and conduct investigations, public or confidential, and issue orders relating to such hearings and investigations. The contested case provisions of RSA 541-A:31-36 shall apply when a person is aggrieved by a decision of the commissioner under this chapter. Appeals shall be made in accordance with RSA 541.
- III. Require licensees to file special or periodic sworn reports, in accordance with rules adopted under RSA 541-A.
- IV. Request the commissioner of safety to provide a report of state and federal criminal records of any applicant, if the commissioner believes such information would be useful in evaluating an applicant's application. Upon such a request, the commissioner of safety shall provide the report.
- V. Delegate any authority or assign any duty, conferred or imposed by this chapter upon the commissioner, to one or more subordinates.
- VI. Establish and appoint an advisory board of massage therapists, as provided in RSA 328-B:5.

VII. Pursuant to RSA 541-A, adopt rules relative to:

- (a) License application fees.
- (b) The contents of license application forms.
- (c) The qualifications required for a massage therapist which shall include demonstration of passage of the National Certification Examination for Therapeutic Massage Bodywork.
- (d) [Repealed.]
- (e) License modifications and license renewal applications and fees.
- (f) The form, content, time, and retention of special and periodic reports required from licensees.
- (g) Exemptions from licensure under RSA 328-B:10.
- (h) Waiver of requirements for a massage therapist's license for any person licensed in another state or country, as provided in RSA 328-B:6, III.
- (i) Procedures for suspension or revocation of a license.
- (j) The establishment of an advisory board approved program of continuing education for licensees which shall require 12 hours of study over a 2-year period for completion before license renewal every 2 years.
- (k) A schedule of administrative fines which may be imposed under RSA 328-B:11-a for violation of this chapter or the rules adopted pursuant to it.
- (l) Procedures for notice and hearing prior to the imposition of an administrative fine imposed under RSA 328-B:11-a.

Source. 1990, 12:1. 1991, 355:49. 1994, 412:38. 1995, 310:183, eff. Nov. 1, 1995. 1996, 47:6, 7, 10, 11, 12, III, eff. June 23, 1996.

**328-B:5 Advisory Board of Massage Therapists.** – The commissioner shall establish the advisory board of massage therapists. The board shall consist of 3 massage therapists who are licensees in the state of New Hampshire. The members shall be appointed for 3 years, staggered so that the term of one member expires each year, and they shall hold office until successors are appointed. In no event shall a member serve more than 2 full consecutive terms. The board shall:

- I. Review the qualifications of applicants for licenses.
- II. Conduct license examinations consisting of practical demonstrations.
- III. Determine applicant performance on the examination.
- IV. Review the qualifications of individuals desiring to conduct massage workshops or seminars who are not licensed in this state.

V. Advise the commissioner regarding the implementation of this chapter.

VI. Serve on the board without any compensation.

Source. 1990, 12:1. 1995, 310:183, eff. Nov. 1, 1995. 1996, 47:8, 11, eff. June 23, 1996.

**328-B:6 License Issuance; Reciprocity.**

I. The commissioner shall issue a massage therapist's license to each qualified applicant who:

(a) Submits the required application form and fee.

(b) Is at least 18 years of age on the date of the application.

(c) Has not been convicted in New Hampshire or in any other state of any sexually-related crime or a crime involving moral turpitude for the 10 years immediately preceding the date of application.

(d) Submits written evidence of being in good mental and physical health.

II. [Repealed.]

III. Except for the requirements of subparagraphs I(b) and (c) of this section, the commissioner may waive any requirements for licensure for any applicant for a massage therapist's license who, on the date of application hereunder, holds a valid license issued by any other state or country, but only if the other licensing body's requirements are substantially equivalent to or not less than the requirements under this chapter.

Source. 1990, 12:1. 1995, 310:183, eff. Nov. 1, 1995. 1996, 47:10, 12, IV, eff. June 23, 1996.

**328-B:7 License Renewal.** – All licenses issued pursuant to this chapter shall expire 2 years after the date of issue. License renewals shall be granted upon approval of the commissioner of the renewal application and submission of the required renewal fee.

Source. 1990, 12:1. 1995, 310:183, eff. Nov. 1, 1995.

**328-B:8 License Revocation or Suspension.** After notice and opportunity for hearing, as provided for under RSA 541-A, the commissioner may revoke or suspend any license issued pursuant to this chapter if the licensee:

I. Violates this chapter or any rule or order adopted or issued under it;

II. Knowingly makes any false statement regarding the application or license or in any report the commissioner requires to be made;

III. Fails to respond to any lawful inquiry of the commissioner;

IV. Is convicted of any sexually-related crime or a crime involving moral turpitude; or

V. [Repealed.]

Source. 1990, 12:1. 1995, 310:183, eff. Nov. 1, 1995. 1996, 47:12, V, eff. June 23, 1996.

**328-B:9 Inspections, Records, and Reports.** – [Repealed 1996, 47:12, VI, eff. June, 23, 1996.]

**328-B:10 Exemptions.**

I. Nothing in this chapter shall prevent a person licensed by this state pursuant to any other provision of law, or any person employed by such a licensee as an assistant, from performing the occupation for which he is licensed.

II. This chapter shall not apply to athletic trainers to the extent they are performing bona fide training services for an athletic team located or training within this state.

III. The commissioner may by rule exempt other classes of persons from all or part of the provisions of this chapter if the commissioner finds that the public interest will be served by such exemption.

Source. 1990, 12:1. 1995, 310:183, eff. Nov. 1, 1995.

**328-B:11 Violations; Penalty.** – Any person practicing massage within the meaning of this chapter, without first obtaining a license as required by this chapter, or who violates any of the provisions of, or rules adopted under this chapter, shall be guilty of a violation if a natural person, or guilty of a misdemeanor if any other person, for the first offense. For a subsequent offense, a person shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person. Each day such facility shall operate or person shall practice this activity after a first conviction shall be considered a subsequent offense.

**328-B:11a Administrative Fines.** The commissioner of the department of health and human services, after notice and hearing, pursuant to rules adopted under RSA 541-A, may impose an administrative fine not to exceed \$2,000 for each offense upon any person who violates any provision of this chapter or rules adopted pursuant to it. Rehearings and appeals from a decision of the commissioner shall be in accordance with RSA 541. Any administrative fine imposed under this section shall not preclude the imposition of further penalties or administrative actions under this chapter. The commissioner shall adopt rules in accordance with RSA 541-A relative to administrative fines which shall be scaled to reflect the scope and severity of the violation. The sums obtained from the levying of administrative fines under this chapter shall be forwarded to the state treasurer to be deposited into the general fund.

Source. 1990, 12:1, eff. Jan. 1, 1991. 1996, 47:9, eff. June 23, 1996.

**328-B:12 Injunctive Relief.** – The practice of massage by a person without a license issued under this chapter or whose license has been suspended or revoked, or has expired is declared to be a danger to the public health and welfare. In addition to any other civil, criminal, or disciplinary remedy, the attorney general, the commissioner, the prosecuting attorney of any county or municipality where the person is practicing or purporting to accordance with the laws of this state, maintain an action to enjoin that person from practicing massage until such person secures a valid license. An injunction without bond is available to the commissioner for enforcement of this chapter.

Source. 1990, 12:1. 1995, 310:183, eff. Nov. 1, 1995. 1996, 47:9, eff. June 23, 1996.

328-B:13 **Home Rule.** – This chapter shall not be construed so as to deprive cities or towns of any authority which they otherwise possess to regulate or bar massage establishments or massage therapists, but no ordinance, bylaw, or regulation of any city or town shall relieve any person of the duty to comply with the provisions of this chapter, or any rule or order adopted or issued pursuant to this chapter.

Source. 1990, 12:1, eff. Jan. 1, 1991. 1996, 47:11, eff. June 23, 1996.